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ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

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The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I have been informed about the details of extensive changes that you are considering in the inspection and enforcement system that protects the 1.5 million residents in our nation's nursing homes. I am extremely troubled by the substance of the changes that you are considering. I believe they would substantially weaken protections for vulnerable nursing home residents.

As I understand it, your proposal has three major components: (1) it will eliminate automatic penalties for nursing homes that have been cited for a violation causing actual harm to residents in two consecutive government inspections; (2) it will reduce the frequency of nursing home inspections from the current requirement of an inspection every year to an inspection every three years for some facilities; and (3) it will measure the quality of resident care by relying on self-reported data ("quality indicators") from nursing homes.

There are numerous problems with your proposal. First, the proposal directly contradicts recommendations made by the U.S. General Accounting Office, which has conducted a series of extensive studies on the inspection and enforcement process in nursing homes. Second, the proposal wrongly assumes that there is a large group of nursing homes that are in compliance with federal health and safety standards year after year and do not need to be inspected annually. And third, the proposal relies extensively on an untested and unproven approach to determining nursing home quality, an approach that relies extensively on self-reported data by nursing homes.

Over the last several years, a series of government reports has concluded that conditions in many nursing homes are poor and that the enforcement system must be strengthened. GAO has found that over one-fourth of U.S. nursing homes have been cited for violations that cause actual harm to residents or place them at risk of death or serious injury. These violations include serious problems, such as untreated pressure sores, preventable accidents, malnutrition, dehydration, and improper medical care.

These GAO findings have been confirmed by many investigative reports written by the Special Investigations Division of the minority staff of the House Government Reform

Committee. In July, for example, a study conducted for me by the Special Investigations Division found that more than 5,000 nursing homes -- almost one of every three U.S. nursing homes -- were cited over the past two years for a violation of standards designed to protect residents from abuse. More than 1,600 of these nursing homes were cited for abuse violations that were serious enough to cause actual harm to residents or had the potential to cause death or serious injury.

In the face of these problems, federal enforcement needs to be strengthened -- not weakened. A good approach to improving nursing home care is H.R. 2677, the Nursing Home Quality Protection Act of 2001, that I introduced in July with Reps. Gephardt and Dingell. This bill provides more money to hire and train staff, institutes minimum staffing requirements, imposes tougher sanctions on substandard facilities, requires criminal background checks on new employees, and provides the public with more information about nursing home conditions. In contrast, the proposal you are considering would undermine current enforcement efforts.

I. The Proposal Is Inconsistent with GAO Recommendations.

In a series of reports over the last several years, GAO has recommended that the nursing home inspection process be made more stringent, more detailed, and more consistent. GAO has also recommended that the Department of Health and Human Services impose sanctions more promptly on nursing homes with repeated serious violations and strengthen federal oversight of the way in which resident complaints are investigated.

The approach you are considering fails to implement GAO's recommendations. In fact, it is contrary to several of these recommendations. One example of this is your proposal to reverse the policy instituted by the Clinton Administration in 1999 requiring automatic sanctions for nursing homes cited for actual harm violations on two consecutive surveys. Your proposal would make it easier for substandard nursing homes to continue endangering the health and welfare of residents, and it directly conflicts with GAO recommendations. The current regulations were put in place after GAO urged HHS to "eliminate the grace period for homes cited for repeated serious violations."¹

II. The Proposal Would Reduce the Frequency of Nursing Home Inspections.

Your proposal would also reduce the frequency of inspections, allowing some nursing homes to go up to three years between inspections. This effort to roll back nursing home enforcement would be a serious mistake. It relies on a critical, but flawed, assumption: that nursing homes that provide a consistently high level of care can easily be distinguished from those that provide a low level of care. However, the facts do not support this assumption. My staff analyzed recent state inspection data maintained by HHS and determined that almost no

¹GAO, *California Nursing Homes: Care Problems Persist Despite Federal and State Oversight* (July 1998).

nursing homes consistently comply with federal nursing home standards over an extended period of time. During a recent three-year period, only 5% of all nursing homes complied with federal nursing home standards for all three years. During the same three-year period, more than 56% of nursing homes had violations that caused actual harm to residents. Under your proposal, many nursing homes would routinely go three years between inspections, meaning that many of these serious violations would not be uncovered.


III. The Proposal Would Rely on an Untested Approach.

In addition, instead of strengthening the survey process, your proposal relies extensively on an untested and unproven approach. In lieu of more frequent inspections, your proposal would require that HHS rely on information about resident care and conditions (“quality indicators”) that are self-reported by nursing homes. But GAO has indicated that these quality indicators are potentially flawed and should not replace on-site inspections. According to GAO:

[Q]uality indicators . . . are not a panacea for all survey methodology problems. Because the basis for quality indicators is self-reported data by nursing homes, there needs to be confidence that the data is accurate. In addition, some portion of the residents selected using quality indicators may no longer be in the nursing home. These problems highlight the importance of on-site augmentation of the sample.²

I believe that improving the quality of care in our nation’s nursing homes is critically important, and I want to work with your Administration on this issue. However, I fear that your new policy will weaken critical protections for nursing home residents.

Sincerely,



Henry A. Waxman
Ranking Minority Member

²GAO, *Nursing Homes: Sustained Efforts Are Essential to Realize Potential of the Quality Initiatives* (Sept. 2000).